

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HILDA L. SOLIS, Secretary of Labor,
United States Department of Labor,

Plaintiff

v.

**KEITH DAVIS; A.B.D. TANK & PUMP
COMPANY; and A.B.D. TANK & PUMP
COMPANY 401(k) & PROFIT SHARING
PLAN & TRUST**

Defendants

CIVIL ACTION

File No. 11-cv-06987

**AMENDED DECLARATION OF KELLI HAMMERL IN SUPPORT
OF SECRETARY'S MOTION FOR JUDGMENT BY DEFAULT AGAINST
DEFENDANT A.B.D. TANK & PUMP COMPANY**

I, Kelli Hammerl, declare as follows:

1. I am a Supervisory Investigator employed by the Chicago Office of the Employee Benefits Security Administration ("EBSA"), United States Department of Labor, stationed at 230 South Dearborn, Suite 2160, Chicago, Illinois 60604.
2. From 2004 to 2012, I was a Senior Investigator with EBSA.
3. In the course of my duties as a Senior Investigator with EBSA, I was assigned the duty of investigating A.B.D. Tank & Pump Company 401(k) & Profit Sharing Plan & Trust ("Plan") to determine whether any violations of Title I of the Employee Retirement Income Security Act ("ERISA") had occurred or were about to occur.
4. Based on records from financial institutions and other ERISA plan documents, I found that Keith Davis ("Davis"), President and sole owner of A.B.D. Tank & Pump Company

("A.B.D.") improperly transferred money from the Plan to defendants in the following amounts in the following manner:

a. From December 6, 2006 through April 15, 2010, Davis transferred \$1,449,329.94 in Plan assets from the Plan's trust accounts to his personal bank accounts.

b. From December 19, 2006 through November 4, 2010, Davis transferred \$1,081,101.87 in Plan assets from the Plan's trust accounts directly to ABD.

c. From August 14, 2009 through September 1, 2010, Davis withdrew \$11,559.10 from the Plan's trust accounts in cash.

d. On September 9, 2009, Davis wrote two checks totaling \$105,443.88 from the Plan's checking account to the United States Treasury for the payment of ABD's federal taxes.

5. Based on records from financial institutions and other ERISA plan documents, I found that, during the period March 7, 2005 through November 1, 2010, the only monies Davis and ABD restored to the Plan totaled \$116,964.35.

6. I have computed that the total amount owed to the Plan before lost opportunity costs is \$2,530,470.44. This was calculated by using the amount Davis improperly transferred from the Plan, \$2,647,434.79, less the amount Davis and ABD restored to the Plan, \$116,964.35 for a total of \$2,530,470.44.

7. Based on the total amount owed of \$2,530,470.44, I have computed lost opportunity costs in the amount of \$236,580.57 through July 1, 2012 using the Internal Revenue Code 6621 interest rates.

8. Therefore, I have computed the total amount owed to the Plan, including lost opportunity costs through July 1, 2012, as \$2,767,051.01.

Pursuant to 28 U.S.C. sec.1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 6, 2012.


Kelli Hammerl
EBSA SUPERVISORY INVESTIGATOR